APPENDIX A.

COURT OF COMMON PLEAS NO. 5.
SEPTEMBER TERM, 1966

No. 4567

DONALD T. LAPINSOHN
AND
CAROL LAPINSOHN, HIS WIFE
v.
LEWIS CHARLES, INC.
(a New Jersey Corporation),
Defendant
AND
FIRST CAMDEN NATIONAL BANK
AND TRUST CO.,
Garnishee

OPINION.

GOLD, P. J.

Plaintiffs, residents of New Jersey, commenced this action by a writ of foreign attachment directed against funds of defendant, also a resident of New Jersey, on deposit with First Camden National Bank & Trust Company at their branch office in Philadelphia. The underlying transaction involved a contract for the sale of real estate located in New Jersey which was allegedly breached by defendant

in that it failed to satisfactorily repair the premises following plaintiffs' complaints of faulty construction. Both defendant and garnishee have filed preliminary objections to the attachment questioning the jurisdiction of the Court.

Defendant's objections are easily disposed of. Their basis is that Pennsylvania Rules of Civil Procedure 1251-79, relating to foreign attachment, were not designed for use by non-resident plaintiffs against non-resident defendants. Defendant frankly admits that the existing case law, e.g., *Fairchild Engine & Airplane Corp. v. Bellanca Corp.*, 391 Pa. 177 (1958) is directly opposed to this proposition. What defendant is asking us to do is overrule established precedent. This is beyond our power. A common pleas court is not at liberty to ignore a pronouncement of the appellate courts and defendant's only recourse is to convince our Supreme Court of the correctness of its position.

Garnishee's preliminary objections present a more serious question. They rely solely on the venue section of the National Banking Act, 12 U. S. C. Sec. 94, which provides as follows:

> "Actions and proceedings against any association under this chapter may be had in any district in which such association may be established or in any State, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

It should be noted at the outset that the above provisions are construed as mandatory rather than permissive, *Mercantile National Bank v. Langdeau*, 371 U. S. 555 (1962), and also that a national bank is "established" or "located" only in the state where its principal office is situated. *Cope v. Anderson*, 331 U. S. 461 (1947). In the present case, First Camden's principal office is located in Camden, New Jersey.

Garnishee's position is that plaintiffs cannot subject the bank to process issued out of a state other than the one in which its home office is maintained. Plaintiffs respond that where a national bank is summoned as garnishee, the action is not "against" the bank and therefore the National Banking Act does not apply.

The original purpose of the venue rule was for the convenience of the banking institution and to prevent interruptions in their business as a result of their books being sent out in obedience to process from state courts. *Charlotte National Bank v. Morgan*, 132 U. S. 141 (1889).

Thus, the issue becomes whether this purpose is equally frustrated whether the bank appears in the action as garnishee or defendant.

The duties of a garnishee are outlined in Rules 1251-79 of the Pennsylvania Rules of Civil Procedure. It will be seen that a garnishee must file a report with the Prothonotary's Office within 20 days from service of the writ setting forth in detail all property of defendant in his possession (Rule 1266). The report must mention which of the property is immune or exempt. If a garnishee fails to file the report within the time specified, Rule 1266(b) provides that the Court shall order the garnishee to appear to be examined orally under oath with respect to the information required, which order the Court can enforce by attachment of the person of garnishee. Rule 1274 states that after judgment is entered against the defendant, the garnishee is required to answer interrogatories within 20 days supplying such information as names and addresses of persons taking part in any transaction, the specific amount of any debt, the value and location of any property and the nature and amount of consideration given for any transfer of property. Rule 1275 is particularly valuable in terms of shedding light on the nature of the garnishee's

relationship to the suit. It provides that the procedure between plaintiff and garnishee shall, as far as practicable, be the same as though the interrogatories were a complaint and the answer of the garnishee were an answer in assumpsit. Finally, Rule 1276 significantly makes the garnishee subject to judgment in the same amount as the defendant in the event of his failure to file a report.

It should be apparent from the above that the duties of a garnishee are comparable to those of a defendant in many ways, and that both are subject to the same ultimate sanction—that of a judgment being entered against them. Thus, should its objections be dismissed, First Camden will be required to file detailed reports and answers to interrogatories or appear personally and be faced with the possibility of having judgment entered against it, all in a state court in which they could not lawfully have been made a defendant in the first place.

In view of the above, we hold that the reason for the rule allowing national banks to be sued only where their principal office is located is equally applicable whether the bank is made defendant or garnishee.

Plaintiffs' additional argument is that the bank has waived the benefits of the Act by its substantial contacts with Philadelphia. We do not agree. The mere fact that First Camden interposed these preliminary objections indicates strong resistance and not waiver. In any event, we are not persuaded that any amount of contacts can affect the mandatory provisions of the Act.

Our research reveals that this is a case of first impression not only in the State of Pennsylvania but also in the entire United States. To borrow a phrase from Longfellow, we feel that we have shot an arrow in the air and that we know where it will land. We think that good law and a pragmatic view dictates the result we have reached. It

is rare in law that such a synthesis takes place. The National Bank Act was enacted many years prior to the promulgation of discovery rules. The defendant here has its principal office in Camden, New Jersey. Were the rule otherwise it could be subject to process issued from several contiguous states and it does not strain our imagination to visualize that the officers of the bank could be subject to discovery proceedings in each of the contiguous states at the same time. It is this direful prospect that the National Bank Act was designed to avoid.

Accordingly, the defendant's preliminary objections are dismissed. The garnishee's preliminary objections are sustained and the complaint is dismissed as to it.

By THE COURT:

/s/ JOSEPH E. GOLD, *P. J.*

DATED: February, 1968.

APPENDIX B.

IN THE
SUPERIOR COURT OF PENNSYLVANIA.

No. 684, October Term, 1967.

DONALD T. LAPINSOHN AND
CAROL LAPINSOHN, h/w.,

v.

LEWIS CHARLES, INC.
AND
FIRST CAMDEN NATIONAL BANK AND TRUST CO.
AND
COMMONWEALTH LAND TITLE INSURANCE CO.

Appeal From the Order of the Court of Common Pleas No. 5 of Philadelphia County at No. 4567, September Term, 1966. (heard in C. P. No. 6).

OPINION BY HOFFMAN, J.

Filed: March 21, 1968.

Lewis Charles, Inc. [Charles] entered into an agreement in Philadelphia on October 20, 1965, wherein it agreed to construct a house in Cherry Hill, New Jersey for Donald T. Lapinsohn and Carol Lapinsohn, appellants. On April 27, 1966, appellants and Charles entered a supplemental agreement, in Philadelphia, containing certain warranties and guarantees concerning the construction of this new home. In reliance on these agreements, settlement was made in Philadelphia at that time.

Soon thereafter, appellants noted evidence of improper construction. To secure relief, appellants instituted suit by foreign attachment seeking to attach Charles' assets in the hands of the First Camden National Bank and Trust Company [Bank], appellee. This Bank is a federally-chartered bank with its principal office in Camden, New Jersey. The Bank also operates a branch bank at 223-225 Market Street, Philadelphia, Pennsylvania. The writ was served on the Bank at its Philadelphia office on November 25, 1966.

The Bank filed preliminary objections on December 5, 1966, alleging that it was immune from suit in Pennsylvania under 12 U. S. C. § 94, a federal venue statute which limits actions against national banks.

On December 16, 1966, appellants filed an Answer and New Matter to the Bank's preliminary objections, alleging *inter alia*, that the Bank, by its conduct, had waived its right to object to such attachment.

On March 21, 1967, depositions were taken of a vice-president of the Bank, and an assistant vice-president who was the manager of the Philadelphia office.

The matter was then heard before the lower court on these preliminary objections and depositions. The court entered an order on May 29, 1967, sustaining the Bank's objections and dismissing appellant's complaint in assumpsit on the basis that the Bank could not be made a garnishee in Pennsylvania. This appeal followed.

The sole question raised by this appeal is whether the assets of a depositor in this Bank, which operates a branch bank and office in Philadelphia, may be garnished in Philadelphia when the Bank's principal office and place of incorporation are in Camden, New Jersey.

Section 94 of 12 U. S. C. provides: "Actions and proceedings against any association under this chapter may be had in any district or Teritorial court of the United

States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

The fundamental purpose underlying this venue statute is to protect a federally-chartered bank from being sued in a district or county other than that in which it was originally established and chartered. *Michigan National Bank v. Robertson*, 372 U. S. 591, 83 S. Ct. 914, 9 L. Ed. 2d 961 (1963); *Mercantile National Bank v. Langdeau*, 371 U. S. 555, 83 S. Ct. 520, 9 L. Ed. 2d 523 (1963); *Buffum v. Chase National Bank*, 192 F. 2d 58, (7th Cir. 1951), cert. denied, 342 U. S. 944, 72 S. Ct. 558, 96 L. Ed. 702 (1952); *Schaefer Sons, Inc. v. Watson*, 272 N. Y. S. 2d 790, 26 A. D. 2d 659 (1966); *Raiola v. Los Angeles First National Trust & Savings Bank*, 233 N. Y. S. 301, 133 Misc. Rep. 630 (1929). Although the word "established" is used with reference to venue in the federal courts and the word "located" with regard to venue in state courts, our extensive research reveals that both words have been interpreted to mean the place specified in the organizational certificate.[1] *Schaefer Sons, Inc. v. Watson*, supra.

"As originally conceived under the [National Bank] Act, national banks were not allowed to establish branches. Although the National Bank Act was amended in 1865 to allow state banks already maintaining legally established branches with certain amounts of capital assigned to them to retain their branches and become national banks, it was not intended at that time to permit national banks generally to establish branches." "An Assault on the Venue Sanc-

1. The Articles of Association of the First Camden National Bank state that: "The main office shall be in Camden, Camden County, New Jersey. The general business of the Association shall be conducted at its main office and its legally established branches."

tuary of National Banks," 34 Geo. Wash. L. R. 765, 768 (1966) [cited hereinafter as 34 Geo. Wash. L. R.]

Since national banks could not establish branches, and since they conducted very little business outside of the general area of their office, it was not unreasonable to restrict suits to the site where that business was conducted. Moreover, the venue statute here involved was passed shortly after the Second National Bank Act, at a time when national banks were in great need of protection from suit. Thus, the purpose of the Act was to protect and afford convenience to the national banks, "and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from state courts." *First National Bank of Charlotte v. Morgan*, 132 U. S. 141, 145, 10 S. Ct. 38 (1889); see *Chaffee v. Glens Falls National Bank & Trust Co.*, 123 N. Y. S. 2d 635, 204 Misc. 181, affirmed 128 N. Y. S. 2d 539, 223 A. D. 694, appeal denied 129 N. Y. S. 2d 237, 283 A. D. 2d 793 (1953).

In 1927, Congress amended the National Bank Act to permit a national bank, under certain conditions, to effectively compete with state banks by setting up branch banks.[2] Section 81 of the Act was also amended in 1927 to read: "The general business of each national banking association shall be transacted in the place specified in its organization certificate *and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title.*" [Emphasis indicates amended portion of the statute.] Thus, for the first time, Congress foresaw that national banks might conduct business outside of the county or district of the principal office.[3] Yet, the venue provision, enacted in 1864, remained unchanged.

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2. See 12 U. S. C. § 36, as amended.

3. See U. S. Cong. Rec. 9890-98 (1932).

We note that some courts have disregarded this historical background and rigidly fulfilled the literal language of § 94 by permitting suit only at the bank's principal office or location. For example, in 1936, the U. S. Court of Appeals for the Second Circuit affirmed the old concept of "location" as limited to the place specified in the organization certificate. *Leonardi v. Chase National Bank,* 81 F. 2d 19 (2d Cir. 1936), cert. denied, 298 U. S. 677 (1936);[4] see 34 Geo. Wash. L. R., supra at 769-770. In most of the suits arising under this provision, however, the bank did not have a branch in a second district or county, but was merely conducting business through an agent or was involved in isolated transactions, *e.g., Michigan National Bank v. Robertson,* supra.[5]

In an effort to ameliorate the harsh results of a strict interpretation of § 94, several courts found national banks subject to suit on a theory of waiver. "It is well settled that the exemption granted to national banks under § 94 is a personal privilege and may be waived by the bank either by failure to assert it or by conduct inconsistent with its re-

4. In *Leonardi,* the Bank's principal office was in the Southern District of New York, but the bank also had a branch in the Eastern District of New York, upon which the summons was served. The Second Circuit held that, even in light of the amendments to the National Bank Act, the proper place for suit was still where the principal office was located. To support this proposition, the Court relied on *National City Bank v. Domenech,* 71 F. 2d 13 (1st Cir. 1934), wherein it was held that a New York bank with a branch bank in Puerto Rico was "located" in New York for purposes of taxation. That a bank may be taxed in only one place in no way supports the proposition that a bank physically located in another district, cannot be subject to suit. Moreover, such a construction disregards the amendments and legislative history which permitted a national bank to conduct business in more than one location.

5. There are relatively few banks having branches in two states because they are now apparently prohibited by 12 U. S. C. 36(c). The branch involved in the instant case was permitted by a grandfather clause in the banking code.

tention." 34 Geo. Wash. L. R. supra at 774, see *First National Bank v. Morgan*, supra.

In several cases involving conduct by banks outside of the district in which they were established some courts, as previously noted, have held that suit could not be brought in such foreign districts. Branch banks, however, were not involved in most of those cases. For example, in *Buffum v. Chase National Bank*, supra, a New York bank conducted business in Illinois with regard to trust accounts. It had registered as a foreign corporation to specifically transact this business. A contract suit, arising out of business wholly unrelated to its trust transactions, was filed against the bank in Illinois. The U. S. Court of Appeals for the Seventh Circuit held that the bank had only consented to be sued on transactions arising out of the limited trust business and had ". . . evinced no intention to waive in its entirety the privilege it had under the laws of being sued only in New York." at 61. Nevertheless, the Court cautioned that the privilege accorded national banks could impliedly be waived by conduct "inconsistent with an assertion of retention of the right." See also *Sulil Realty Corp. v. Rye Motors, Inc.*, 257 N. Y. S. 2d 111, 45 Misc. 2d 458, affirmed 262 N. Y. S. 2d 989, 47 Misc. 2d 715 (1965).

On the other hand, several state courts have specifically found a waiver of the right to assert the protective venue statute where a national bank has transacted business in a foreign jurisdiction, even though no branch bank was set up. In *Okeechobee County v. Florida National Bank*, 112 Fla. 309, 150 S. 124 (1933), the defendant bank was liable under a tripartite agreement for any breach of a trust agreement in a foreign jurisdiction. The Court held that when a national bank had specifically entered into such an agreement in a district or county other than its charter location, it had thereby waived its right to assert the venue

statute by a preliminary objection. Recently, in *Lichtenfels v. North Carolina National Bank*, 260 N. C. 146, 132 S. E. 2d 360, 1 A. L. R. 3d 897 (1963), the Supreme Court of North Carolina was faced with a similar problem. There, the bank acted as a testamentary trustee and was sued for mismanagement of the trust in a county other than the one in which it was established. The bank moved preliminarily to transfer the action to the county of its establishment. The Supreme Court of North Carolina reversed a lower court's grant of the motion and stated, "undoubtedly they [the bank] sought and accepted the grant of authority conferred on them by the Superior Court of Buncombe County for pecuniary reasons." The Court reasoned that when a bank intentionally conducts business beyond its principal office, it waives any venue protection, just as a person may waive venue requirements in diversity suits.[6] *Neirko Co. v. Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 60 S. Ct. 153, 84 L. Ed. 167 (1939).

The Supreme Court of the United States has also recognized the concept of waiver. See *First National Bank of Charlotte v. Morgan*, supra. In the recent case of *Michigan National Bank v. Robertson*, supra, Justice BLACK, in a concurring opinion, stated that a national bank can certainly waive its venue privilege, and thus, it can be sued in any state where it has done business related to the cause of action.

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6. In *Schaefer Sons, Inc. v. Watson*, supra, the Appellate Division in New York remanded the record in the case for determinations as to the bank's activities in the county wherein venue was sought to be placed. That case stated that the important elements to take into consideration are the bank's financial activity in the county, and if a branch is involved, any evidence that indicates an intent to conduct business as part of the community. The majority held that only by making such findings could the Court decide if the bank had waived its protection under the venue statute. The dissent concluded that the bank should be subject to service at a branch bank whenever it is physically located in another county or district.

In view of the fact that national banks have set up branches or conduct business in outlying counties or other states, recent decisions have stated that the sanctuary created by the venue statute cannot be absolute. See *Buffum v. Chase National Bank*, supra; 34 Geo. Wash. L. R. 765, supra.[7] The most logical reason for this approach is well-stated in *Chaffee v. Glens Falls National Bank & Trust Co.*, supra. There the Court stated "The inconvenience and the interruptions of banking business thus discussed in 1889 have today been mitigated, if not, in fact, minimized, by present modes of rapid transportation and communication and by mechanical and electronic accounting systems and photostatic and microfilming processes, among others, and the present pre-trial practice and liberalization of the rules respecting documentary evidence have further eased the burden incident to litigation in which banks may be involved. Thus the supposed objective of the statute has been in large part attained through other means. ". . . To hold that while any bank may quite properly seek loans, trust estates and other business in all parts of the state, those with whom that business is done can sue only in the county of the bank's domicile, seems an unnecessarily harsh determination."

We believe this approach to be realistic. If a national bank avails itself of a jurisdiction by setting up a branch to conduct general banking business, it has manifested an intent to be found in that jurisdiction for purposes of suits arising out of any business conducted there. It is to be remembered that the original purpose of the venue restrictions was to limit suits to where most of the records were

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7. One recent article in reviewing the decisions under 12 U. S. C. § 94, stated this: ". . . [I]f the national bank has a branch established for conducting general business in the jurisdiction, the bank is doing sufficient business in that jurisdiction to constitute waiver of section 94." 34 Geo. Wash. L. R. at 777.

kept and business conducted. But, if a branch can be established to conduct business, there is no logical reason to rigidly apply a statute when doing so actually subverts its purpose.

The instant case is an apt example of where, although suit may be brought at the branch bank, the general policies of the National Banking Act are preserved. The Bank has, since, 1928, through a merger, owned and operated a branch bank in Philadelphia. It is a single story bank building which employs six persons, including an assistant vice-president and three tellers. The Philadelphia branch offers a full range of banking services at this office, which are generally the same as those offered by the Bank at its main office or other branches in New Jersey.[8] In other words, it is a "full-service bank."

In addition, the Philadelphia branch considers itself a competitor of, and in direct competition with other banks in Philadelphia, and actively solicits Philadelphia customers. The branch also pays real estate taxes on its Philadelphia property, pays Pennsylvania use tax on property brought in this state, and pays and withholds Philadelphia wage tax on its employees working in Philadelphia.

It is also important to note that deposits in any office of the Bank can be withdrawn at any other office, no matter where the records are kept. All records of savings fund deposits made in the branch are kept at the Philadelphia office. On checking accounts, the Philadelphia office receives up to date records of each account every morning via computers in Camden in order to effectuate this liberal withdrawal service. The vice-president testified that if any

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8. Some of the services offered are safe deposit boxes, savings accounts, Christmas and vacation clubs, collateral and personal loans, bank by mail services and payroll make-up. In addition, if a customer comes into the Philadelphia office for services not rendered directly in that office, the branch bank will transport him over to Camden to secure these services.

account is attached by service on the New Jersey office, such attachment in New Jersey also attaches the account in its Philadelphia office. Thus, the present methods of record keeping utilized by the Bank obviates the primary purpose of the venue statute and, as the depositions clearly indicate, places no burden upon either the branch office or the charter office in Camden.

The instant attachment arises out of the fact that the Bank operates a branch bank in Philadelphia. To the extent that Charles' funds are made available to it in Philadelphia by the Bank, they are attachable by service of a writ on the Bank. In normal garnishment and attachment actions, the plaintiff, who secures a judgment against a defendant, becomes the debtor with regard to money originally owed to the defendant. Here, had the Bank maintained only an office which offered loan or mortgage services, it could be argued that its Philadelphia operations were not related to appellant's attachment. See *Buffum v. Chase National Bank*, supra. The basis of the present attachment, however, is the very fact that the Bank's Philadelphia operations make the attached funds, a debt owing to Charles, available to Charles in Philadelphia. See *Schaefer Sons, Inc. v. Watson*, supra. Hence, the Bank is quite inextricably tied to one of the parties in the underlying assumpsit suit, and, therefore, fused into the matrix of this action.

For the above reasons, we find that the Bank has waived its right to assert the protective provisions of 12 U. S. C. § 94. The Order of the lower court sustaining the Bank's preliminary objection is, therefore, reversed, and appellants' writ of foreign attachment and complaint in assumpsit are reinstated.

MONTGOMERY and WATKINS, *J.J.*, dissent.

APPENDIX C.

IN THE

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT.

MISCELLANEOUS DOCKET 16.

No. 179.

DONALD T. LAPINSOHN AND
CAROL LAPINSOHN, H/W

v.

LEWIS CHARLES, INC.

AND

FIRST CAMDEN NATIONAL BANK AND
TRUST CO.

AND

COMMONWEALTH LAND TITLE
INSURANCE CO.

ORDER.

June 10, 1968.

Petition Denied.

PER CURIAM.

APPENDIX D.

Excerpts From the Pennsylvania Rules of Civil Procedure Relating to Foreign Attachment Practice.

Rule 1252. *Scope.*

A foreign attachment may be issued to attach property of a defendant not exempt from execution, upon any cause of action at law or in equity, other than an action ex delicto arising from acts committed outside the Commonwealth, in which the relief sought includes a judgment or decree for the payment of money when

(1) the defendant is an individual who is a non-resident of the Commonwealth, even though he is present in the Commonwealth;

(2) the defendant is a partnership or an unincorporated association without a regular place of business in the Commonwealth and the action is against the defendant in its firm or association name, even though one or more members of the partnership or association are present in or are residents of the Commonwealth;

(3) the defendant is a foreign corporation or similar entity which is not registered in the Commonwealth.

Rule 1253. *Garnishee.*

Any person may be made a garnishee and shall be deemed to have possession of property of the defendant if he

(1) owes a debt to the defendant;

(2) has property of the defendant in his custody, possession or control;

(3) holds as fiduciary property in which the defendant has an interest; or

(4) holds the legal title to property of the defendant, whether or not in fraud of creditors.

Rule 1254. *Venue.*

(a) An attachment against personal property of the defendant may be issued in and only in a county in which

(1) the property is located, or

(2) a garnishee may be served.

(b) An attachment against real property of the defendant may be issued in and only in a county in which all or any part of the property is located. . . .

Rule 1257. *Service of Writ Upon Garnishee or Person in Possession.*

The sheriff shall serve the writ in the same manner as a writ of summons in assumpsit upon the named garnishee and upon any person not named as garnishee who is found in possession of property of the defendant, and shall furnish the person served with an additional copy of the writ for each defendant. . . .

Rule 1266. *Garnishee's Report. Examination of Garnishee.*

(a) Within twenty (20) days after service of the writ upon him, a garnishee shall file in the office of the prothonotary a report under oath setting forth in detail all property of the defendant in his possession. If any property attached is immune or exempt from attachment, the report shall so state.

(b) If a garnishee fails to file the report within the time specified, the court on motion shall order the garnishee

to appear to be examined orally under oath with respect to the information required. The court may enforce its order by attachment of his person.

Rule 1267. *Notice by Garnishee.*

(a) Upon being served with the writ, the garnishee shall promptly forward a copy to the defendant.

(b) Upon being served with the complaint, the garnishee shall promptly forward a copy to any defendant who has not been served, appeared or filed a bond.

(c) Upon filing his report, the garnishee shall promptly forward a copy to the defendant.

(d) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by a competent adult at any place within or outside the Commonwealth in the manner prescribed for the service of a writ of summons in an action of assumpsit or when it is mailed to the defendant by registered mail directed to his last known address.

Rule 1268. *Garnishee. Duty to Defend. Preliminary Objections to Attachment.*

(a) If the garnishee forwards copies to the defendant as provided in Rule 1267, he shall be under no duty to resist the attachment or defend the action in any manner but may, prior to judgment against the defendant, resist the attachment by preliminary objections.

(b) The defense of immunity or exemption of the property from attachment and the defense that no property of the defendant was in the possession of the garnishee at the time of service of the attachment may be pleaded by the garnishee by preliminary objection but are not waived if not so pleaded. . . .

Rule 1271. ***Defenses. Immunity or Exemption. No Property Attached.***

The defense of immunity or exemption of property from attachment and the defense that no property of the defendant was in the possession of the garnishee at the time of service of the attachment, may be raised by the defendant without thereby subjecting himself to the jurisdiction of the court

(1) by preliminary objection under Rule 1017(b)(1), or

(2) by a petition to open judgment, filed at any time before the garnishee files his answer to interrogatories. . . .

APPENDIX E.

Title 17 *Pa. Stat. Ann.* § 190, subtitled: "Appeal to supreme court from superior court" reads as follows:

> Nevertheless in any action or proceeding whatever above committed to the final and exclusive decision of the said court, there may still be an appeal from its judgment or order to the Supreme Court, if an appeal to the Supreme Court be specially allowed by the Superior Court itself or by any one justice of the Supreme Court. As amended 1963, Aug. 14, P. L. 819 § 1.